SINGLE BENCH

IN THE HONOURABLE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

WRIT PETITION NO. 2953 OF 2006

PETITIONER : South Eastern Coalfields Limited, Through: The Chairman cum Managing Director, Seepat Road, Bilaspur (C.G.).

VERSUS

RESPONDENTS :

1. The Appellate Authority under the Payment of Gratuity Act, 1972, The Regional Labour Commissioner (Central), Madhhatal, Jabalpur (M.P.).

2. The Controlling Authority under the Payment Gratuity Act, 1972, Assistant Labour Commissioner, (Central), Shahdol (M.P.).

3. Ajit Kumar, Ex. C.M.E. Type V/2, Officers Colony Jamuna and Kotma of S.E.C.L. Post Jamuna, District Anuppur (M.P.).

P.R. No. 2708/06
Presented by Shri P.S. Koshy
dated 22/05/06

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI ETC.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP(C) 2353/06 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

23.6.2006

Shri P.S. Koshy, Advocate for the petitioner.

Heard on admission.

By this petition the petitioner has questioned the legality, propriety and correctness of order dated 12.1.2006 (Annexure P-2) passed by respondent No.2-Controlling Authority whereby the petitioner herein has been directed to pay the gratuity amount to respondent No.3 herein to the tune of Rs.3,50,000/- with 9% simple interest on it and also the order dated 27.4.2006 (Annexure P-1) passed by the Appellate Authority whereby the Appellate Authority after confirming the order of the Controlling Authority directed that simple interest be paid @ 10% instead of 9%.

This petition can be disposed of at the admission stage itself without giving notice to respondent No.3 because the enquiry, which was pending against respondent No.3, has been decided vide order dated 25.5.2006 and the Disciplinary Authority has ordered for forfeiture of 25% of gratuity amount payable to the petitioner and therefore, issuance of notice will further delay the payment of gratuity to respondent No.3. However, it is made clear that if respondent No.3 is not satisfied with this order, then he will be at liberty to request for recalling of this order by filing an interlocutory application.

Necessary facts for disposal of this petition are that respondent No.3 was working in the petitioner-company as Sub Area Manager, Jamuna

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Kotma Area and he demitted the office after attaining the age of superannuation on 30.11.2004. It has been mentioned in the petition that the services of respondent No.3 are governed by Service Conduct Discipline and Appeal Rules, 1978 (Annexure P-3). Respondent No.3 while working as Area Safety Officer during the period 2000 to 2003 committed misconduct and therefore, a charge sheet dated 25.8.2003 was issued to him on 20.11.2004, as on account of deviation in measurement of lead distance Amadan/Bartarai to Govinda C.H.P. by respondent No.3 the petitioner-company suffered a loss of Rs.14,97,226.93 paise towards less recovery of surface transport charges. Now that enquiry has been completed and the disciplinary authority has passed final order dated 25.5.2006 whereby a penalty of forfeiture of 25% of gratuity amount payable to respondent No.3 has been passed. However, respondent No.2 vide impugned order Annexure P-2 passed the order for payment of full gratuity amount to respondent No.3 and it was further directed that 9% interest be paid to the petitioner within 30 days from the date of order under intimation to the controlling authority. Same was confirmed by the appellate authority and the interest was modified from 9% to 10%.

Learned counsel for the petitioner drawn the attention of the Court towards the Chapter-IV of Service Conduct Discipline & Appeal Rules, 1978 and as per Rule 27.1 (d) of the Rules, minor penalty of recovery from pay or gratuity of the whole of or part of any pecuniary loss caused to the company by negligence or breach of orders or trust can be imposed. Rule

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

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34.3 envisages that during the pendency of the disciplinary proceedings, the disciplinary authority may withhold payment of gratuity, for ordering the recovery from gratuity of the whole or part of any pecuniary loss caused to the company.

Now, as has been mentioned earlier that the final order has already been passed whereby the disciplinary authority has ordered for forfeiture of 25% of gratuity amount payable to respondent No.3, therefore, the order impugned is liable to be modified to the extent that 75% amount of gratuity with interest be paid to respondent No.3 and remaining 25% amount of gratuity should not be paid to respondent No.3, as the same stands forfeited as per order dated 25.5.2006. Of course, if respondent No.3 avail any legal remedy available to him and in that remedy if any other order is passed modifying the penalty, then he will be entitled to the fruits of that order.

It is made clear that remaining 25% of amount shall remain with the respondent appellate authority until the order passed by the disciplinary authority attains its finality.

With the directions aforesaid, the petition stands disposed of.

Consequently, M.(W.)P. No.2258/06 and I.A. No.5902/06 & 5848/06 also stand disposed of.

Certified copy as per rules.

Sd/-
L.C. Bhadoo
Judge

oshan/-